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Message Text

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ACTION EUR-12

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AMEMBASSY PARIS
AMEMBASSY TOKYO
US MISSION NATO 1435

C O N F I D E N T I A L SECTION 1 OF 2 MADRID 0618

E.O. 11652: XGDS-1
TAGS: PFOR, SP
SUBJECT: THE ELECTORAL LAW

SUMMARY AND CONCLUSIONS:
-- NO "TECHNICAL" ISSUE IS MORE IMPORTANT TO THE DEMOCRATIZATION PROCESS THAN THE ELECTORAL LAW, THE SHAPE OF WHICH WILL AFFECT THE EVENTUAL DISTRIBUTION OF SEATS IN THE NEW PARLIAMENT (CORTES) AND, HENCE, THE DISTRIBUTION OF POLITICAL POWER. THE POLITICAL REFORM ACT, APPROVED OVERWHELMINGLY BY THE REFERENDUM, GIVES A CLEAR PRIMACY TO THE LOWER HOUSE (CONGRESS OF DEPUTIES) IN RESPECT OF ORDINARY LEGISLATION AND A SOMEWHAT MORE LIMITED PRIMACY IN CONSTITUTIONAL REFORM, THE MOST IMPORTANT SINGLE TASK OF THE NEW CORTES.
--WITH RESPECT TO THE ELECTORAL LAW, THE REFORM BILL MANDATES THAT A 350 MEMBER LOWER HOUSE WILL BE CHOSEN PROPORTIONALLY ON A PROVINCE BASIS WITH A MINIMUM NUMBER OF SEATS PER PROVINCE AND A THRESHOLD
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PERCENTAGE TO INHIBIT PARLIAMENTARY FRAGMENTATION (I.E. KEEP MINI PARTIES OUT OF THE LOWER HOUSE.) WITH RESPECT TO THE UPPER HOUSE (SENATE) THE REFORM LAW MANDATES ELECTIONS ON A MAJORITY BASIS OF FOUR SENATORS FROM EACH OF THE 47 MAINLAND PROVINCES, PLUS SPECIAL ARRANGEMENTS FOR THE AFRICAN ENCLAVES AND THE INSULAR PROVINCES OF THE CANARIES AND BALEARES, AND A PROVISION FOR THE

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KING TO NAME UP TO AN ADDITIONAL ONE-FIFTH OF THE SENATORS.
--THE DETAILS, WHICH WILL MAKE A DIFFERENCE TO THE ELECTORAL OUTCOME, ARE LEFT TO THE ELECTROAL LAW, NOW A SUBJECT OF NEGOTIATION BETWEEN THE GOS AND VARIOUS POLITICAL GROUPS, PRINCIPABLLY THE TRADITIONAL OPPOSITION AND ITS "COMMITTEE OF NINE" ON THE ONE HAND AND FRAGA'S CONSERVATIVE ALIANZA POPULAR ON THE OTHER. THE PERMUTATIONS ARE ENDLESS BUT WE HAVE SOUGHT BELOW TO DRAW UP A PRECIS OF THE MOST SALIENT ISSUES--THE ONES THAT MAKE A DIFFERENCE--BASED ON A SERIES OF CONVERSATION WITH GOS FIGURES AND POLITICAL ACTORS. THOUGH THERE ARE IMPORTANT ISSUES TO BE RESOLVED, IT SEEMS REASONABLY CLEAR:
(A) THAT A ROUGH CONSENSUS IS BEGINNING TO TAKE SHAPE ON THE ELECTORAL LAW;
(B) THAT PRIME MINISTER SUAREZ IS IN A GOOD POSITION TO DECIDE CONTROVERSIAL POINTS BASED ON HIS PERCEPTION OF WHAT IS NEEDED;
(C) THAT THE ELECTORAL LAW WILL BE FORTHCOMING BY MID-FEBRUARY AT THE LATEST AND IN PLENTY OF TIME FOR MID-MAY OR EARLY JUNE ELECTIONS; AND
(D) THAT THE ELECTORAL LAW WILL COMMAND THE NECESSARY CONSENSUS OF MAJOR POLITICAL ACTORS TO ESTABLISH THE INITIAL CREDIBILITY OF THE SPANISH ELECTORAL PROCESS. END SUMMARY AND CONCLUSIONS.

1. THE GOS/OPPOSITION NEGOTIATIONS. FRANCISCO FERNANDEZ ORDONEZ, THE SOCIAL DEMOCRATIC LEADER WHO CHAIRS
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THE TRADITIONAL OPPOSITION'S NEGOTIATING SUB-GROUP ON THE ELECTORAL LAW TOLD US HE HAD KEPT IN CLOSE PRIVATE TOUCH WITH THE GOS, SPECIFICALLY JUSTICE MINISTER LAVILLA, TO MAKE SURE THAT THE GOS AND OPPOSITON POSITIONS ON THE ELECTORAL SYSTEM WOULD DOVETAIL REASONABLY. HE JUDGED THERE WOULD NOT BE TOO MANY AREAS OF DIFFERENCE WITH THE GOS AND SOME WOULD BE MORE TO PRESERVE A SHOW OF OPPOSITON UNITY (THERE BEING SIGNIFICANT DIVERGENCE AMONG THE OPPOSITION ITSELF) THAN FOR REAL. AT ALL EVENTS, HE JUDGED THAT PRIME MINISTER SUAREZ WOULD PAY MORE ATTENTION TO PSOE LEADER FELIPE GONZALEZ' PRIVATE VIEWS THAN TO THE JOINT OPPOSITION PROPOSALS.

2. THE RULES OF THE ROAD
-- NEITHER PRIME MINISTER SUAREZ NOR OTHER "POLITICAL" MINISTERS (E.G. THE PARTIDO POPULAR LINKED FOREIGN MINISTER OREJA, THE CENTER-RIGHT UDE LINKED MINISTER OF THE PRESIDENCY OSORIO) WILL STAND FOR ELECTION UNLESS

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THEY STEP DOWN. SUAREZ HAS AGREED, SINCE HE AND OTHER
POLITICAL MINISTERS WILL BE NAMED TO THE SENATE BY THE
KING, ADN, IN THIS SCENARIO SO LONG AS THE CENTRIST GROUPS DO WELL
IN THE ELECTIONS, AS, MOST NOW EXPECT, SUAREZ WOULD REMAIN
PRIME MINISTER.
--EQUAL ACCESS TO RADIO, TELEVISION AND PUBLIC
FACILITIES, PLUS GRADUAL NEUTRALIZING OF THE NATIONAL MOVEMENT
SO THAT ITS ORGANIZATION CANNOT BE USED AS AN ELECTORAL
PRESSURE GROUP.
--THE OPPOSITION WANTS A NON-PARTISAN ELECTORAL COMMISSION OR
SOMETHING SIMILAR TO SUPERVISE THE ELECTIONS, GUARANTEE
THEIR PURITY AND ESTABLISH THEIR CREDIBILITY, PLUS THE
CUSTOMARY BALLOT BOX SUPERVISION TO PREVENT STUFFING, ETC.
--PUBLIC FINANCING IS UP IN THE AIR. (CONSIDERATIONS
OF COST, WHAT TO DO ABOUT THE COMMUNISTS, ETC. RENDER FULL
PUBLIC FINANCING UNLIKELY, IN OUR JUDGEMENT, IN THESE
FIRST ELECTIONS.)
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--THE ELIMINATION, FOR ELECTORAL PURPOSES, OF THE
CONTROVERSIAL REGISTRATION PROCEDURES OF THE POLITICAL
ASSOCIATIONS LAW. THE QUESTION OF COMMUNIST (PCE)
LEGALITY WOULD THEN BE DECIDED IN THE COURTS (IN AN
ANALOGOUS PROCESS TO THE COURT PROCEEDINGS AGAINST PCE
LEADER SANTIAGO CARRILLO) RATHER THAN BY GOVERNMENTAL
FIAT.

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C O N F I D E N T I A L SECTION 2 OF 2 MADRID 0618

3. THE ELECTORAL LAW--LOWER HOUSE (PROPORTIONAL REPRES-
ENTATION).
--A "CLOSED LIST SYSTEM" UPON WHICH THERE IS NOW
AGREEMENT AMONG GOVERNMENT, THE TRADITIONAL OPPOSI-
TION AND THE FRAGA-LED CONSERVATIVE ALIANZA POPULAR,
DESPITE THE EARLIER INCLINATIONS OF SOME SMALLER
PARTIES TOWARDS COMPLICATED PREFERENTIAL OR SPLIT
TICKET SYSTEMS. IN OTHER WORDS THE VOTER WILL MARK A
BALLOT ONLY ONCE, FOR A PARTY LIST (OR ELECTORAL COALI-
TION), PROMOTING PARTY DISCIPLINE AND, ONCE AGAIN,
DISADVANTAGING MINI-PARTIES.
--THE MINIMUM PERCENTAGE. ALFONSO ORORIO, THE
SECOND VICE-PRESIDENT OF GOVERNMENT AND MINISTER OF THE
PRESIDENCY, HAS TOLD THE AMBASSADOR THE GOS NOW INCLINES
TOWARD THE FAMILIAR DE HONDT SYSTEM OF PROPORTIONAL
REPRESENTATION (E.G. PORTUGAL) WITHOUT A MINIMUM PERCENTAGE.
THIS IS CURIOUS, SINCE IT WOULD NOT SEEM TO MEET THE EXPLICIT REQUIRE-
MENT
FOR A MINIMUM PERCENTAGE SET OUT IN THE POLITICAL REFORM
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BILL. DE FACTO, IT MIGHT ACCOMPLISH THE SAME THING,
SINCE THE DE HONDT SYSTEM AGGREGATES SEATS TO LARGER
PARTIES AND DISAGGREGATES SEATS TO THE SMALLER ONES.
THE OPPOSITION WANTS A TWO PERCENT FLOOR, IN DEFERENCE TO
THE PCE POSITION,BUT FERNANDEZ ORDONEZ AND FELIPE
GONZALEZ HAVE TOLD THE GOS PRIVATELY THAT A 5PERCENT FLOOR
WOULD BE BETTER IN ORDER TO ASSURE THAT NEITHER THE
EXTREME RIGHT (FUERZA NUEVA OF BLAS PINAR, ETC.) NOR
THE EXTREME LEFT (MCE, PTE, ETC) GET ANY SEATS. THE
OPPOSITION WOULD LIKE THIS TO APPLY ON THE BASIS OF THE
TRADITIONAL SPANISH REGIONS (AUDIENCIAS TERRITORIALES)
IN ORDER TO PROVIDE SEATS FOR STRONG REGIONAL PARTIES
IN CATALUNYA AND THE BASQUE COUNTRY. HOWEVER, THERE
IS NO PRECISE AGREEMENT ON WHAT THE MODERN VERSION OF
TRADITIONAL REGIONS SHOULD BE (E.G. DOES NAVARRE BELONG
TO THE BASQUE REGION?)
--REMAINDERS. THE GOS HAS ALWAYS BEEN RELUCTANT
TO GET INTO THE COMPLICATED BUSINESS OF ADJUDICATING
A BATCH OF SEATS ON THE BASIS OF AGGREGATING REMAINDERS
(VOTES THAT DO NOT ADD UP TO A SEAT) OSORIO SAID THERE WOULD
BE NO REMAINDERS, JST STRAIGHT DE HONDT SYSTEM.
THE OPPOSITION, AT THE PARTICULAR INSISTENCE OF THE
CATALANS, HAD ABANDONED THE IDEA OF A NATIONAL

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REMAINDER SYSTEM SAY, ALONG ITALIAN LINES, AND WANTS
A REMAINDERS SYSTEM ALONG TRADITIONAL REGIONAL LINES.
--MINIMUM NUMBER OF SEATS. THE GOS WILL SET THE
MINIMUM NUMBER OF SEATS PER PROVINCE (GIVING A BONUS TO
THE SMALLER PROVINCES) AT TWO OR THREE, INSTEAD OF
THE FOUR OR FIVE THE ALIANZA POPULAR WANTS OR THE ONE
THE OPPOSITION CALLS FOR. FROM OUR CONVERSATIONS WITH
FRAGA AND THE OPPOSITION, THIS IS SEEN AS AN
ACCEPTABLE COMPROMISE.
--THE OPPOSITION WOULD LIKE A LAW THAT PERMITS
WELL-KNOWN PARTY LEADERS (FEW PARTY FIGURES ARE WELL
KNOWN OUTSIDE MADRID AND THEIR HOME DISTRICTS) TO
RUN AT THE HEAD OF THE LIST IN A NUMBER OF PROVINCES,
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CEDING THEIR PLACES TO THE NEXT MAN IN ALL BUT ONE.

4. THE UPPER HOUSE (ELECTION BY MAJORITIES) HAS
APPARENTLY PRODUCED MUCH CONFUSION, PARTICULARLY AMONG
THE OPPOSITION.
--THE PSOE'S TENTATIVE POSITION, SUPPORTED BY
OTHERS, FAVORED A RUN-OFF SYSTEM (THE FRENCH BAL-
LOTAGE SYSTEM). THE RUN-OFF WOULD PURPORTEDLY UNITE
CENTER AND LEFT AGAINST THE SPECTRE OF FRAGA'S
CONSERVATIVE ALIANZA POPULAR BUT AT THE SAME TIME IT
POSED THE POTENTIAL RISK OF PSOE-COMMUNIST COOPERA-
TION IN ANY RUN-OFF.
--THE COMMUNISTS, ON THE OTHER HAND, FAVORED THE
JAPANESE DIET (LOWER HOUSE) SYSTEM. FERNANDEZ
ORDONEZ NOTED THAT HE DIDN'T FULLY UNDERSTAND THIS
COMPLICATED SYSTEM BUT IT WAS CLEAR THAT THE PCE, AS
A WELL-DEFINED MINORITY PARTY, HOPED TO GAIN MORE SINGLE
SEATS IN DIFFERENT PROVINCES THAN THEY WOULD DESERVE
ON THE STRENGTH OF THEIR POPULAR VOTE. THE JAPANESE
SYSTEM (MULTIPLE MEMBER DISTRICT IN WHICH THE VOTER
VOTES FOR ONLY ONE CANDIDATE AND TOP FOUR WIN SEATS) XXMXVM
WOULD ALSO PROMOTE DIS UNITY WITHIN COALITIONS, PARTICULARLY IN THE
CENTER, SINCE CANDIDATES FROM THE SAME GROUP WOULD COMPETE

WITH EACH OTHER AS MUCH OR MORE THAN CANDIDATES FROM
OPPOSING PARTIES.
--THE ALIANZA POPULAR FAVORS A WINNER-TAKE-ALL
SYSTEM IN XHICH THE TOP PARTY TOOK ALL FOUR SEATS.
--THE GOS, ACCORDING TO OSORIO, INCLINES TOWARD A
SENATE SYSTEM WHERE THE VOTER VOTES FOR THREE CANDI-
DATES, (SOMETHING THE PSOE ALSO FAVORS). IN THE GOS
SCHEME HOWEVER, THERE IS NO RUN-OFF FEATURE, THE TOP
FOUR VOTE GETTERS SIMPLY TAKE THEIR SEATS.

5. ATMOSPHERICS IN THE NEGOTIATING COMMISSION. THE

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PCE'S SANTIAGO CARRILLO HAD EXPECTED TO RECEIVE ROYAL
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TREATMENT FROM THE OTHER EIGHT OPPOSITION LEADERS IN THE COMMITTEE. HE HAD NOT, AND WAS MIFFED, SAID FERNANDEZ ORDONEZ. WHERE THERE WERE DIFFERENCES, IT WAS CLEAR TO HIM THAT PRIME MINISTER SUAREZ WOULD PAY MORE ATTENTION TO THE PRIVATE VIEWS OF THE PSOE'S FELIPE GONZALEZ, WHOSE SPECIAL MEETINGS WITH SUAREZ HAVE CAUSED NO LITTLE PIQUE AMONG SOME OF THE OTHER MEMBERS OF THE COMMITTE OF NINE. AS OSORIO MADE CLEAR TO THE AMBASSADOR, PRIME MINISTER SUAREZ'S GAME IS TO ENCOURAGE GONZALEZ AND THE PSOE TO MOVE AS FAR AWAY FROM THE COMMUNISTS AS POSSIBLE. STABLER

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